

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE AND REDUCING PERFORMANCE BOND OF MCCARTHY CREEKSIDE PHASE 1 – BUILDINGS A, B AND F SUBDIVISION, TRACT NO. 10393 AND GRANTING AUTHORIZATION TO THE CITY ENGINEER TO RELEASE THE PERFORMANCE BOND AFTER THE ONE-YEAR WARRANTY PERIOD**

**WHEREAS**, the City Council of the City of Milpitas on November 15, 2016, approved the plans and specifications for the McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision, Tract No. 10393, (the “Project”) to be completed by The McCarthy Ranch Limited Partnership as part of its industrial development on 625 North McCarthy Boulevard; and

**WHEREAS**, the City of Milpitas has heretofore entered into a subdivision improvement agreement on November 15, 2016 with The McCarthy Ranch Limited Partnership, for the McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision; and

**WHEREAS**, The McCarthy Ranch Limited Partnership, as Principal, and The Guarantee Company of North America USA, as Surety, executed and posted a certain Performance Bond No. 12137656 conditioned upon the faithful performance of the provisions of said subdivision improvement agreement and upon the faithful performance of all improvement work required thereunder; and

**WHEREAS**, said public improvements for McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision have been completed and the subdivision improvement agreement provides that the security shall extend for a period of one year after the date of acceptance of said improvements to cover the warranty period of said improvements under said agreement; and

**WHEREAS**, the City Council is willing to consent to a reduction in the penal sum of said security during said one year warranty period; and

**WHEREAS**, the City Engineer of the City of Milpitas has made a final inspection of said improvements for the McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved plans and specifications.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Those certain public improvements constructed as part of the McCarthy Creekside Phase 1 – Buildings A, B and F Subdivision, Tract No. 10393, are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. The penal sum of the faithful performance bond securing said improvements may be reduced to the sum of \$60,300, upon request of Principal and Surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein

contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the developer or his surety, or sureties, by law or by the above referend public improvement agreement, save and except as expressly set forth herein.

4. The City Council grants authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney